



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

Docket Number USCG-2019-0300

RIN 1625-AA08

Special Local Regulations; Festival of Sail Duluth 2019, Lake Superior, Duluth, MN

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary special local regulation for a designated area of the Duluth Harbor entrance to Superior Bay on Lake Superior during the Festival of Sail 2019 event in Duluth, MN. This action is necessary to provide for the safety of life on these navigable waters around the port of Duluth, MN during a sail festival with tall ships beginning on August 11, 2019 and ending the afternoon of August 13, 2019. This proposed rulemaking would prohibit persons and vessels from being in the designated region unless authorized by the Captain of the Port Duluth or a designated representative. We invite the public to comment on this supplemental notice of proposed rulemaking, specifically on the extended time of the special local regulation.

DATES: Comments and related material must be received by the Coast Guard on or before July 17, 2019.

ADDRESSES: You may submit comments identified by docket number USCG-2019-0300 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the

“Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Abbie Lyons, Waterways Management, MSU Duluth, U.S. Coast Guard; telephone 218-725-3818, e-mail Abbie.E.Lyons@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On December 11, 2018, Draw Events LLC notified the Coast Guard that it will be conducting a Festival of Sail event in Duluth, MN from August 11 through August 13, 2019. The Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the Federal Register on May 8, 2019. A public comment period was held from May 8, 2019 to July 7, 2019 with no comments received; however, concerns were raised by local law enforcement and public safety of the initial proposed temporary special local regulation only covering the parade of sail on August 11, 2019 from 7:00 a.m. to 1:00 p.m. Due to the influx of spectator vessel traffic during this event, we are proposing to extend the special local regulation to include the entire Festival of Sail, from August 11, 2019 at 7:00 a.m. to August 13, 2019 at 1:00 p.m. This special local regulation will be enforced from 7:00 a.m. through 1:00 p.m. on August 11, 2019 during the Parade of Sail event. It will be

enforced at other times during the effective period as deemed necessary by the Captain of the Port Duluth (COTP) or her on-scene representatives. Notice of enforcement of the special local regulation will be provided by Broadcast Notice to Mariners and by the COTP's on-scene representatives. The purpose of this supplemental notice of proposed rulemaking is to solicit comments on the extended effective time period of the regulation.

The legal basis for this proposed rule is the Coast Guard's authority under 46 U.S.C. 70041; 33 CFR 1.05-1.

III. Discussion of Proposed Rule

The COTP is proposing to establish a special local regulation from 7 a.m. on August 11, 2019 to 1 p.m. on August 13, 2019. The special local regulation would cover designated navigable waters in the vicinity of Duluth Harbor.

The duration of the zone is intended to protect the safety of vessels and these navigable waters before, during, and immediately after the scheduled Festival of Sail. Only the designated sailing vessels associated with the event are permitted within the zone while it is being enforced. No other vessels or persons will be permitted to enter the zone without obtaining permission from the COTP or a designated representative. The COTP or a designated representative may be contacted via VHF Channel 16 or by telephone at (218) 428-9357. The regulatory text proposed appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This SNPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the SNPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the availability of the Superior Harbor entrance as an alternate entry into Superior Bay, the short time frame of the special local regulation, and the estimated number of spectator vessels around the Duluth Harbor entrance for the event. We anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine Channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast

Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the restricted area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the

various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human

environment. This proposed rule involves a special local regulation lasting 3 days that would prohibit entry within a designated area around the Duluth Harbor entrance.

Normally such actions are categorically excluded from further review under paragraph L[61] of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS.

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1

2. Add § 100.T09-0300 to read as follows:

§ 100.T09-0300 Special Local Regulations; Festival of Sail Duluth 2019, Lake

Superior, Duluth, MN.

(a) *Regulated Areas:* This Area includes all waters of Lake Superior and Duluth Harbor bounded by Rice's Point to the west and Duluth to the north, within the following boundaries: Beginning at position 46°46'48.36" N, 092°05'16.44" W, across Duluth Harbor to 46°47'02.76" N, 092°05'17.88" W, turning north toward the Duluth Lift Bridge to 46°47'19.32" N, 092°04'04.80" W, to 46°46'50.88" N, 092°05'17.88" W, out

the Duluth Harbor Entrance at 46°46'45.12" N, 092°05'35.16" W, then northwest to 46°46'45.12" N, 092°05'39.84" W back to the north Duluth Entrance Light at 46°47'01.32" N, 092°05'51.00" W, through the canal at 46°47'00.60" N, 092°05'52.08" W, then along Minnesota Point at 46°46'51.60" N, 092°05'46.32" W, entering Minnesota Slip at 46°46'39.00" N, 092°06'03.96" W, encompassing the slip from 46°46'32.16" N, 092°05'38.76" W to 46°46'41.52" N, 092°05'36.24" W and back out the slip at 46°46'42.60" N, 092°05'34.44" W and back to the starting position of 46°46'48.36" N, 092°05'16.44" W.

(b) *Special Local Regulations.* (1) In accordance with the general regulations in § 100.35 of this part, entry into, transiting, or anchoring within the regulated areas is prohibited unless authorized by the Captain of the Port (COTP) Duluth or on-scene representatives.

(2) Vessels and persons receiving COTP Duluth or on-scene representative authorization to enter the area of this special local regulation must do so in accordance with the following restrictions:

(i) Vessels and persons must transit at a speed not exceed six (6) knots or at no wake speed, whichever is less. Vessels proceeding under sail will not be allowed in this Area unless also propelled by machinery, due to limited maneuvering ability around numerous other spectator craft viewing the Festival of Sail; and

(ii) Vessels and persons will not be permitted to impede the parade of sail from 7:00 a.m. to 1 p.m. on August 11, 2019 once it has commenced, as the tall ships are extremely limited in their ability to maneuver.

(3) The Coast Guard will provide notice of the regulated area prior to the event through Local Notice to Mariners and Broadcast Notice to Mariners. Notice of actual enforcement will be provided by on-scene representatives.

(4) The “on-scene representative” of the COTP Duluth is any Coast Guard commissioned, warrant, or petty officer and any Federal, State, or local officer designated by the COTP to act on her behalf.

(5) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP Duluth by telephone at (218) 428-9357, or on-scene representative via VHF radio on Channel 16, to obtain permission to do so. Vessel operators given permission to enter, operate, transit through, anchor in, or remain within the regulated areas must comply with all instructions given by COTP Duluth or on-scene representatives.

(c) *Effective date.* These regulations are effective Sunday, August 11, 2019 at 7:00 a.m. through August 13, 2019 at 1:00 p.m. These regulations will be enforced from 7:00 a.m. through 1:00 p.m. on August 11, 2019 during the Parade of Sail, and actual notice of enforcement during various periods of time will be conducted by the on-scene representative throughout the event.

Dated: July 3, 2019

F. M. Smith,
Commander, U.S. Coast Guard,
Captain of the Port Duluth.

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